IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1459 OF 2002

The Premier Automobiles Ltd. ..Petitioner.

Vs.

Mr.HST Hegde & anr. ..Respondents.

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Mr.T.S.Shetty for the Petitioner.

Mr.N.M.Ganguli for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

31st March, 2005.

P.C.:

1. An application under Section 33-C(2) of the Industrial Disputes Act, 1947 has been allowed by the order of the Labour Court dated 28th December, 2001.

2. The claim of the First Respondent who was working in the Trim Tailoring Department of the Petitioner was to the payment of an incentive

allowance. The witness for the management admitted in the course of the cross examination that the settlement of December 1966 provides for the payment of incentives inter alia in the Trim Department. In the course of the cross examination of the First Respondent the case that was put to him was that the company had fixed norms under which 20 cars were required to be produced per shift each day in 1989 and that consequently 40 instrument panels were required to be produced. The case which was put to the workman was that his production was only at the level of the norms which were prescribed and that he was therefore not entitled to any incentive. In the course of the examination-in-chief of the Personnel Manager who deposed on behalf of the Petitioner, the case which was sought to be established in paragraph 11 was that the management had fixed a schedule for production at 75 sets per workman per day and that the First Respondent was producing 40 sets which was sufficient to cover 20 cars. The incentive according to the witness, was payable for production exceeding 20 cars per day. Now the cross examination of the witness for the management is significant in two respects. In paragraphs 5

and 6 of the notes of cross examination, the witness admitted that incentive was based on group working; that there may have been groups of 40 to 45 workers in the Trim Department at the relevant time and that the First Respondent was the only workman out of the aforesaid group of 40 to 45 workers who was not paid the incentive allowance. The witness admitted that he was unable to show the production of workmen in the Trim Department with reference to the settlement. In paragraph 9 of his notes of evidence the witness admitted that there was a practice of giving a show cause notice to any workman who was giving less production after some time and that it was true that the First Respondent was not given any ordinary memo regarding alleged less production. But, to my mind, what clinches the issue in favour of the First Respondent are the clear admissions of the management's witness in paragraph 11 of the notes of evidence. He stated therein that incentives were payable to employees if production was more than 40 sets per day. He then admitted that it was true that the First Respondent had given a production of 45 and 55 sets as per production reports, despite which he was not given the incentive. The management's witness

admitted that it was true that though other workmen had given less production than the First Respondent they had been paid the incentive. Furthermore the witness also admitted that other workmen who had given less production of 40 sets had been given the incentive though the First Respondent who had produced 75 sets had still not been given an incentive.

3. This evidence has been mustered in paragraph 17 of the order of the Labour Court. The Labour Court notes that first and foremost there is no document on record to show that there was a prescribed norm of 75 sets for the payment of incentive allowance. The Labour Court then has noted that the management had no justification to deny the payment of the incentive allowance to the First Respondent when others who had put in less production were given the incentive. The Labour Court held that if as the witness for the management deposed the incentive was for group working, there was no reason to isolate the First Respondent amongst the entire group which was otherwise paid the incentive allowance. If the allowance was for meeting individual production norms, there was no

justification to deny the allowance to the First Respondent when others with even less production were given the allowance. This reasoning of the Labour Court does not suffer from any infirmity. The conclusion is based on evidence on the record.

4. The figures in relation to the production of the First Respondent have been annexed at Exh.J to the Petition and these amply demonstrate the correctness of the conclusions of the Labour Court. In the circumstances, there is no merit in the substantive challenge to the order of the Labour Court.

5. However, in so far as the question of interest is concerned, the attention of the Court has been drawn to two judgments of learned Single Judges of this Court; the first in Payal Electronics v. Arun Vasant Pawar (2002 III CLR 328) and the second in Swan Mills Limited v. Sakharam Dhondu Panchal (2004 III CLR 870). In the subsequent judgment, Justice F.I.Rebello agreed with the view which has been expressed in the earlier decision to the effect that as an executing Court under Section 33-C(2) the Court can do no more than to execute

the order and it is not open to the Labour Court to add anything more than the amount of money due. The learned Single Judge noted that in that case, however, interest was awarded from the date of the order of the Labour Court which was therefore held to be sustainable. In view of these judgments, the award of interest in the present case shall stand modified to the extent that the First Respondent shall be entitled to interest at the rate of 12% on and from 28th December, 2001, the date of the order of the Labour Court, until 22nd July, 2003 when the deposit was made before this Court. The interest which has accrued thereafter on the investment which has been made by the Prothonotary and Senior Master shall enure to the benefit of the First Respondent on the principal amount which is due and payable. The amount which is due and payable to the First Respondent on the aforesaid basis shall accordingly be computed and shall be paid over by the Prothonotary & Senior Master to the First Respondent within a period of four weeks from today. In the event that any surplus remains that shall be refunded to the Petitioner. The Petition is accordingly disposed of.